

SHEET 1 PAGE 1

1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----
4 Jackson Mahaffy; Flora Mahaffy;
5 Daniel Nelson; and Paul Von Arx,

6 Plaintiffs,

7 vs.

Case File No. 08-cv-4992
JMR/SRN

8 Robert J. Kroll; Wallace M.
9 Krueger, Christopher J. Bennett;
10 Aaron C. Hanson; Christopher
11 Bishop; David Campbell; Toddrick
12 Kurth; Brandon Kitzerow; James
13 Rugel; Clark Goset; and Mark
14 Durand, all acting in their
15 individual capacity as
16 Minneapolis Police Officers;
17 and the City of Minneapolis,

18 Defendants.
19 -----

20 Videotaped Deposition of

21 ROBERT J. KROLL

22 November 6, 2009
23 9:00 a.m.

24 Volume I

25
Linda J. Trondson, RPR, MR
Ask, Trondson & Smith Court Reporters
701 Fourth Avenue South - Suite 500
Minneapolis, Minnesota 55415
612-332-2603 *** 800-332-2603
ats@atscourtreporters.com

COPY

K5

SHEET 2 PAGE 2

2

Videotaped Deposition of Robert J. Kroll taken on the 6th day of November, 2009 commencing at approximately 9:00 a.m. at the Offices Ask, Trondson & Smith Court Reporters, Suite 500, 701 Fourth Avenue South, Minneapolis, Minnesota, 55415, before Linda J. Trondson, Notary Public, County of Hennepin, State of Minnesota, to be used in the above-entitled matter.

APPEARANCES:

JAMES W. DELAPLAIN, Attorney at Law,
2140 Fourth Avenue North, Anoka, Minnesota, 55303,
and,

DANIEL J. BRAZIL, Attorney at Law,
2124 Dupont Avenue South, Minneapolis, Minnesota,
55405, appeared on behalf of the Plaintiffs.

C. LYNNE FUNDINGSLAND and DARLA BOGGS,
Assistant City Attorneys, Office of the Minneapolis
City Attorney, Room 210, 350 South Fifth Street,
Minneapolis, Minnesota, 55415, appeared on behalf of
the City of Minneapolis.

KARIN E. PETERSON, Attorney at Law, Rice,
Michels & Walther, LLP, 10 Second Street Northeast,
Suite 206, Minneapolis, Minnesota, 55413, appeared on
behalf of Robert J. Kroll and Wallace M. Krueger.

PAGE 3

3

ROBERT J. KROLL,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. DELAPLAIN:

Q Good morning, Lt. Kroll. As I said on the record, I represent the plaintiffs in regard to a case that has been brought against the City of Minneapolis and yourself as one of the defendants regarding an incident that occurred on May 14th, 2004, in the area of Dusty's Bar and the Old Science Renovation Factory, and I'm going to try to move quickly through this deposition for everybody's benefit, and I'm hoping we can work together on just getting through some background information.

Did you graduate from a Minnesota high school?

A Yes.

Q And where was that?

A Harding High School in St. Paul, Minnesota.

Q And what year was that?

A 1983.

Q And did you attend any education after high school?

A Yes.

Q And what type of education have you achieved since high school?

PAGE 4

4

A I have an Associate of Arts degree from Lakewood Community College, now it's Century College, in White Bear Lake, Minnesota, and I have a Bachelor of Science degree from St. Mary's University in Minneapolis.

Q In what year did you obtain the Associate of Arts degree?

A '87.

Q And how about the Bachelor of Science?

A 2004.

Q Beyond those degrees, do you have any other degrees or certificates from an educational institution?

A Several military, on Reserve. Other than that, no.

Q Were you ever in the active military?

A No.

Q And did you say you're in the Reserve?

A I was. I retired after 21 years.

Q And I understand you work for the Minneapolis Police Department. Prior to your employment with the Minneapolis Police Department, have you worked for any other law enforcement organization?

A No.

Q Do you teach any classes or give instruction yourself?

A Currently I just teach at the Citizens' Academy. In

PAGE 5

5

the past I've taught many classes.

Q Can you describe to me what those many classes are that you've taught in the past?

A Well, in the military I was a Military Police Instructor for nine years. I taught civil disturbance, riot control, building clearing, military operations in an urban terrain, leadership courses. I've got a lengthy military file with regard to instruction. I'm sure I'm missing quite a bit.

Q Have you ever taught classes within the Minneapolis Police Department?

A Yes, fairly extensive also.

Q Can you name some of those classes that you've taught?

A Various courses in SWAT. Again, crowd control, building clearing, civil disturbance. I've taught various classes in SWAT operations, I've taught various classes in union work. I assisted at training many years ago in Officer Survival Week. Again, SWAT courses through other agencies. It's lengthy.

Q And when were you first hired by the Minneapolis Police Department?

A 1989.

SHEET 3 PAGE 6

6

1 Q And can you just give me briefly an overview of how
2 your career progression has gone and what your
3 postings have been since 1989?

4 A I was a recruit in '89. I worked the 4th Precinct,
5 the 5th Precinct and 3rd Precinct patrol. I then
6 worked undercover vice.

7 I was promoted to sergeant in '95. I
8 worked as an investigator in the Juvenile Division
9 and the Fraud Forgery Unit. I worked as a unit
10 supervisor in the Public Housing Unit, the Booking
11 Unit, the Waterworks Unit. I worked as a patrol
12 Supervisor in the 3rd Precinct, and STOP, which was
13 the full-time version of SWAT's strategic tactical
14 operations.

15 I was promoted to Lieutenant three and a
16 half years ago, so that would be 2005, May of -- or
17 June of 2005, promoted and detailed temporarily as a
18 Lieutenant in my current assignment in STOP or
19 full-time SWAT, then permanently promoted to
20 Lieutenant in the 2nd Precinct patrol, and about a
21 month ago reassigned to command the Domestic Assault
22 Unit.

23 Q I'm sorry, command --

24 A The Domestic Assault Unit.

25 Q Is that within any certain precinct or is that --

PAGE 8

8

1 A I think it's three to four years now.

2 Q And was Sgt. Krueger the vice-president immediately
3 prior to you becoming vice-president, do you recall?

4 A Yes. I was a director on the board, and he came on
5 the board as a vice-president, and a few years back
6 we switched roles, and he became a director and I
7 became the vice-president.

8 Q Do you remember how many years ago it was that he
9 became a director -- I'm sorry, that you were a
10 director and he became vice-president?

11 A I've been on the board 13 and a half years, so I
12 guess I got on in '96, and I think Wally came on
13 around '98 or '99.

14 Q And with the Federation, the union, what is your role
15 currently? As vice-president, what do you actually
16 do?

17 A There's various duties. We do contract negotiations.
18 We represent officers in internal statements,
19 internal investigations, disciplinary proceedings.
20 I'm on the IOD committee, I'm on the uniform
21 committee. There's several committees that we sit
22 on, oversee. I'm chair of the personnel committee,
23 which entails the grievance committee, the uniform
24 committee, the IOD committee.

25 Q What is IOD?

PAGE 7

7

1 A No, that's at headquarters in the Criminal
2 Investigation Division.

3 Q And prior to May, 2004, did you know Wallace Krueger?

4 A Yes.

5 Q And when did you first meet Sgt. Krueger?

6 A Approximately when I first got on SWAT, which was
7 '91.

8 Q And did you become friends with Sgt. Krueger?

9 A Yes.

10 Q Is he still your friend presently?

11 A Yes.

12 Q And you were on SWAT together in 1991, is that
13 correct?

14 A Yes.

15 Q What other assignments have you had while you were
16 working together?

17 A I don't think we've ever been assigned in the same
18 position department-wise. We've been on the union
19 board together.

20 Q Are you still on the union board?

21 A Yes.

22 Q And what's your position?

23 A Vice-president.

24 Q And how long have you been vice-president of the
25 union?

PAGE 9

9

1 A Injured on duty. We review cases that are submitted.

2 Q And in the scope of those duties you've described, is
3 one of your duties with the Federation to sit with
4 officers in, for example, Civilian Review
5 investigation statements?

6 A Correct, yes.

7 Q And how many times would you estimate have you done
8 that?

9 A Somewhere between a thousand and two thousand. I'm
10 estimating. I guess approximately a thousand. I
11 mean I've been doing it for 13 years. I probably do
12 50 a year, upwards of 50 a year.

13 Q So you're familiar with the process.

14 A Oh, yes.

15 Q Do you also sit in Internal Affairs investigations,
16 do you represent officers?

17 A Yes. I should clarify. That's a combination of
18 Civilian Review and Internal Affairs proceedings.

19 Q Have you ever -- and the term you used, you used the
20 term representing an officer if you're sitting with
21 them?

22 A Yes.

23 Q Have you ever represented Sgt. Krueger in Civilian
24 Affairs or internal investigations?

25 A I don't believe so, but that's not to say I haven't.

SHEET 4 PAGE 10

10

1 Again, with the volume of people I've represented, I
 2 don't have a specific recollection of representing
 3 him.
 4 Q How about one of the other co-defendants in this
 5 case, Officer Bennett, do you know if you've
 6 represented him in any Internal Affairs
 7 investigations or Civilian Review investigations?
 8 A I can't say for sure.
 9 Q How about Officer Hanson?
 10 A I can't say for sure.
 11 Q Officer David Campbell?
 12 A I can't say for sure.
 13 Q How about Officer Bishop?
 14 A Again, the same, I can't say for sure.
 15 Q So you have no recollection of representing any of
 16 those officers in Internal Affairs investigations or
 17 Civilian Review investigations, right?
 18 A Correct. Nothing significant that sticks out. Not a
 19 major deal where, you know, there was any substantial
 20 disciplinary action taken on any of them.
 21 Q Now, do you know all of those officers, all four of
 22 them?
 23 A Yes.
 24 Q And did you know all four of those officers prior to
 25 May 14th, 2004?

PAGE 11

11

1 A I guess I knew who they were, but very vaguely. We
 2 had never worked in the same -- I had never worked in
 3 the same assignments with any of those officers. And
 4 I actually got to know all of them better because my
 5 last assignment where I was a lieutenant was in that
 6 2nd Precinct where most of those worked at that time.
 7 So since this incident we're discussing, I've got to
 8 know all of them better, and I would have known them
 9 by face, possibly by name, at the time of the
 10 incident, but I'm not certain.
 11 Q Now, at the time of the incident you were a sergeant
 12 in the 2nd Precinct, is that correct?
 13 A No. I was a sergeant, and I don't remember what my
 14 unit was at the time. I want to say I was either in
 15 the Waterworks Unit or STOP patrol, I don't remember
 16 specifically which assignment.
 17 Q What do you do on the Waterworks?
 18 A That was a unit that was developed for Homeland
 19 Security, the threat of terrorist activity at the
 20 water treatment facility. It was two-fold. It was
 21 at the height of, you know, terrorist alerts where
 22 they took measures to secure the water treatment
 23 because we supplied it for, you know, three counties
 24 and seven cities, the Minneapolis water treatment
 25 facility. And in addition to that, it was a unit

PAGE 12

12

1 that was formed up as a job saving measure to avoid
 2 layoffs. So we developed a unit that replaced
 3 private security there, and I had about a dozen
 4 officers that worked under me at that assignment.
 5 There was a unit created for that.
 6 Q And how about STOP patrol? Is STOP patrol
 7 essentially SWAT?
 8 A Yes, it's a full-time patrol division, much like a
 9 precinct, except its a citywide patrol and all the
 10 officers assigned to it are members of the SWAT team,
 11 and they can be pulled out of regular patrol to go
 12 execute high-risk search warrants or to perform
 13 other, you know, SWAT duties, a full-scale callout or
 14 something like that, but they're a citywide uniformed
 15 patrol function.
 16 Q When you're on STOP patrol, are you also still
 17 assigned to some specific precinct?
 18 A No, you're citywide responsibility.
 19 Q Now, I understand on the night in question that you
 20 were attending a party prior to the incident
 21 involving Mr. Mahaffy.
 22 A Yes.
 23 Q And a party in Uptown somewhere, right?
 24 A Yes.
 25 Q Do you remember where that was?

PAGE 13

13

1 A I know it was on Lagoon. I can't remember the name
 2 of the establishment. It was on Lagoon, near
 3 Hennepin.
 4 MS. PETERSON: If we're going to get into
 5 the particulars of that incident like we did with
 6 Mr. Krueger, Sgt. Krueger, I'd like this under the
 7 confidential agreement that we had before, as this is
 8 still a disciplinary measure that has not resulted in
 9 the final disposition of a disciplinary measure, so
 10 all of this should be under that protective order,
 11 just as we did it for Mr. Krueger, or Sgt. Krueger.
 12 MR. DELAPLAIN: Okay, we'll acknowledge
 13 that you've made a request that all of this be
 14 protected by the protective order in the case.
 15 MS. PETERSON: What do you mean, you're
 16 going to acknowledge that it will be protected by the
 17 protective order?
 18 MR. DELAPLAIN: Well, that means that I
 19 recognize that you're designating it as protected.
 20 I'm not agreeing it is protected, but I am agreeing
 21 that we have to abide by the order, whether it's
 22 ultimately protected or not.
 23 MS. PETERSON: So you're saying that the
 24 Court will decide whether this is under the
 25 protective order or not?

SHEET 5 PAGE 14

14

1 MR. DELAPLAIN: Yes.

2 MS. PETERSON: You can raise your
3 objection, but under the Data Practices Act he has
4 the right, because it's not the final disposition of
5 this disciplinary matter, that everything that
6 revolves around this matter is private personnel data
7 and is not public, and is therefore subject to the
8 confidential order that we agreed to. And if we need
9 go to court on that, we will go to court on that.

10 MR. DELAPLAIN: Understood.

11 MS. PETERSON: Before you start, all of
12 Lt. Kroll's answers from here on until we deem
13 otherwise I am putting under the confidential order
14 as private personnel data, and until such time as I
15 say that it is not protected by that, I want all of
16 his answers to be deemed to be under that
17 confidential, subject to the Court order.

18 COURT REPORTER: Did you also want this
19 portion sealed?

20 MS. PETERSON: I do.

21 MR. DELAPLAIN: I'll state for the record
22 that I object to the sealing of any of the police
23 reports. Particularly, for example, the supplemental
24 report, which I think already was public record and
25 doesn't contain any particular confidential

PAGE 15

15

1 information regarding Lt. Kroll and was actually used
2 as a part of the basis for charging Mr. Mahaffy with
3 a crime.

4 (The unprotected portion of the deposition
5 was concluded at approximately 9:20 a.m.
6 on November 6, 2009)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SHEET 1 PAGE 1

16

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----
4 Jackson Mahaffy; Flora Mahaffy;
5 Daniel Nelson; and Paul Von Arx,

6 Plaintiffs,

7 vs.

Case File No. 08-cv-4992
JMR/SRN

8 Robert J. Kroll; Wallace M.
9 Krueger, Christopher J. Bennett;
10 Aaron C. Hanson; Christopher
11 Bishop; David Campbell; Toddrick
12 Kurth; Brandon Kitzerow; James
13 Rugel; Clark Goset; and Mark
14 Durand, all acting in their
15 individual capacity as
16 Minneapolis Police Officers;
17 and the City of Minneapolis,

18 Defendants.
19 -----

20 Continued Videotaped Deposition of

21 ROBERT J. KROLL

22 November 6, 2009
23 9:20 a.m.

24 Volume II - Sealed as Private and Confidential
25 Pursuant to Protective Order
Pages 16-87

26
27 Linda J. Trondson, RPR, MR
28 Ask, Trondson & Smith Court Reporters
29 701 Fourth Avenue South - Suite 500
30 Minneapolis, Minnesota 55415
31 612-332-2603 *** 800-332-2603
32 ats@atscourtreporters.com

COPY

SHEET 2 PAGE 2

Sealed as Private and Confidential Pursuant to Protective Order

17

Volume II of the Videotaped Deposition of Robert J. Kroll taken on the 6th day of November, 2009 commencing at approximately 9:20 a.m. at the Offices Ask, Trondson & Smith Court Reporters, Suite 500, 701 Fourth Avenue South, Minneapolis, Minnesota, 55415, before Linda J. Trondson, Notary Public, County of Hennepin, State of Minnesota, to be used in the above-entitled matter.

APPEARANCES:

JAMES W. DELAPLAIN, Attorney at Law,
2140 Fourth Avenue North, Anoka, Minnesota, 55303,
and,

DANIEL J. BRAZIL, Attorney at Law,
2124 Dupont Avenue South, Minneapolis, Minnesota,
55405, appeared on behalf of the Plaintiffs.

C. LYNNE FUNDINGSLAND and DARLA BOGGS,
Assistant City Attorneys, Office of the Minneapolis
City Attorney, Room 210, 350 South Fifth Street,
Minneapolis, Minnesota, 55415, appeared on behalf of
the City of Minneapolis.

KARIN E. PETERSON, Attorney at Law, Rice,
Michels & Walther, LLP, 10 Second Street Northeast,
Suite 206, Minneapolis, Minnesota, 55413, appeared on
behalf of Robert J. Kroll and Wallace M. Krueger.

Also Present: Sophie Mills

EXHIBITS MARKED

1	Street Map.....	20
2	Supplemental Report.....	46
3	CRA Statement.....	47
4	CRA Printout.....	64

PAGE 4

Sealed as Confidential Pursuant to Protective Order

19

Q Did you have any alcohol at Psycho Suzie's?

A I had one beer.

Q So prior to encountering Mr. Mahaffy, your testimony is you had three beers at those two parties. Did you have any other alcohol in addition to that that evening prior to the incident?

A No. We went for dinner at Psycho Suzie's, or I had dinner at Psycho Suzie's.

Q And I understand that before you encountered Mr. Mahaffy you were driving in Mr. Krueger's vehicle, Sgt. Krueger's vehicle?

A I was riding in his vehicle.

Q Okay. Can you describe to me what occurred as you approached that area of 13th Avenue Northeast and Marshall Street Northeast?

A Wally was driving his Envoy. His wife Cheryl was in the front seat, I was seated in the back. There was a person later identified as Mr. Mahaffy in the street, in the middle of the street like he was in distress, putting up like a stop indication for us, waving his arms, stopping us to stop, flagging us down.

Wally slowed down, and it didn't appear to be normal, he was acting -- he had bizarre behavior, and he just decided to continue past. We didn't know

PAGE 3

Sealed as Confidential Pursuant to Protective Order

18

EXAMINATION (Continued)

BY MR. DELAPLAIN:

Q Lt. Kroll, do you remember where you were prior to going to the party?

A No.

Q Do you remember if you drove to the party?

A I rode with Sgt. Krueger.

Q Do you know, that night did you leave your vehicle at another location or at home?

A I believe it was in the SWAT garage.

Q Was it your recollection that you left from work to go to the party?

A I was in the union office working earlier that day.

Q And do you recall what time you arrived at the party?

A No.

Q Had you been drinking alcohol at all prior to the party?

A No.

Q And at the party did you have some alcohol?

A Yes.

Q And do you recall how much you drank?

A Not exactly. Probably three beers.

Q And then I understand you left the party and went to Psycho Suzie's.

A Yes.

PAGE 5

Sealed as Confidential Pursuant to Protective Order

20

if it was a stranded motorist, someone in distress, why he was flagging us down, but it wasn't inclement weather, there was people around, we just didn't think it was a good idea to stop, or he didn't, he was driving the car. And he slowed, and as he continued to pass, Mahaffy had some type of bag or satchel that he swung and hit the rear driver's side of Wally's truck.

Q And then what happened after that?

A Wally stopped the truck and got out and checked for damage and detained the guy, and I did the same, I got out of the passenger side and went around to see what that was all about, and at that time we got jumped by a mob of about 15 to 20 people that came off the sidewalk to the east side of the road.

(Kroll Deposition Exhibit 1
marked for identification)

Q I'm showing you what has been marked as Deposition Exhibit No. 1. I'll represent that this is a graphic that was obtained by my office from the Minneapolis Map Department. They purport to represent a schematic of that area, Marshall Street Northeast and 13th Avenue Northeast, along with an outline of the buildings in that area.

Now, looking at what's been marked as

SHEET 3 PAGE 6

Sealed as Confidential Pursuant to Protective Order

21

- 1 Exhibit No. 1, do you recognize that as being the
2 area that you've been describing?
- 3 A Yes.
- 4 Q And looking at the markings of the buildings, would
5 you agree that what's indicated there as 1319 is the
6 location of what's been referred to as Dusty's Bar?
- 7 A Yes.
- 8 Q And 1317 is what's known as the Old Science
9 Renovation, Inc.?
- 10 A Yes.
- 11 Q And is this where the incident occurred that you're
12 talking about?
- 13 A Yes, it is.
- 14 Q And can I have you mark for me -- I'll give you a red
15 pen and ask, if you can, to draw in where it is that
16 Mr. Krueger's vehicle was stopped at the time he got
17 out of it.
- 18 A (Indicating).
- 19 Q And could you just put a 1 next to that so we can
20 keep track.
- 21 A (Indicating).
- 22 Q Thank you. And can you place on that diagram an M at
23 the location that you first saw Mr. Mahaffy or where
24 Mr. Mahaffy was when he struck the vehicle.
- 25 A (Indicating).

PAGE 8

Sealed as Confidential Pursuant to Protective Order

23

- 1 this is prior to either you or Sgt. Krueger
2 confronting him or coming in close proximity to him?
- 3 A When we parked he was, yeah, acting very bizarre in
4 the middle of the street.
- 5 Q And then what did you do?
- 6 A Well, we looked at the vehicle and went to approach
7 him, and then he took up like a karate fighting
8 stance and started swinging and kicking, and then all
9 of the people that were in front of 1317 to 1319 came
10 off and tackled us and began punching us and kicking
11 us, and, you know, the next thing we knew -- the way
12 I've described it before is it looks like a
13 quarterback drops back to pass and the offensive line
14 lays down and the defense splits, that's exactly what
15 it looked like, like eleven-plus people tackling us.
- 16 Q Okay, and you being the quarterback?
- 17 A Yes.
- 18 Q And so how many people were -- how big was the crowd
19 when you first got out of the vehicle?
- 20 A I estimate it at 15 to 20.
- 21 Q And they were located where on the diagram?
- 22 A In this area here (indicating).
- 23 Q Okay. And you marked that, and maybe you can put
24 just a No. 2 next to that so we can keep track of
25 that spot.

PAGE 7

Sealed as Confidential Pursuant to Protective Order

22

- 1 Q Now, you say you got out of the vehicle. Was there
2 any conversation or any words between you and
3 Sgt. Krueger prior to the two of you exiting the
4 vehicle?
- 5 A No.
- 6 Q So you both just got out and went around to see if
7 there was damage on the vehicle?
- 8 A To stop him and see, you know, why he did it and,
9 yes, if there was damage, to check for damage and not
10 let him get away. It was a brand-new vehicle.
- 11 Q Now, when you got out of the car, you were on the
12 passenger side so you had to come around the -- did
13 you come around the backside or the frontside?
- 14 A Just got out of the back door and went behind the
15 vehicle.
- 16 Q And what was Mr. Mahaffy doing when you came around
17 the backside of the vehicle?
- 18 A Displaying bizarre behavior. He took up like a
19 karate fighting stance and was swinging a bag and
20 yelling vulgarities that were unintelligible, I
21 couldn't understand what he was saying.
- 22 Q And this is as you were coming around the backside of
23 the vehicle?
- 24 A Yes.
- 25 Q And so you're saying he was standing there -- and

PAGE 9

Sealed as Confidential Pursuant to Protective Order

24

- 1 A (Indicating).
- 2 Q And you've indicated an area in front of -- in the
3 curb area or the sidewalk area in front of Dusty's
4 Bar and the Old Science Renovation?
- 5 A Yes.
- 6 Q So when you first got out of the vehicle, was that
7 crowd up on the sidewalk or out on the street, or
8 where were they?
- 9 A Both. I didn't pay particular attention to the crowd
10 at first, but along the sidewalk area there on the
11 edge of the street.
- 12 Q All right. And you've indicated Mr. Mahaffy as being
13 out in the middle of the street. Was there anybody
14 else out in the middle of the street with him?
- 15 A No.
- 16 Q So he was in the middle of the street and the crowd
17 was over on the sidewalk area?
- 18 A Yes.
- 19 Q And you say that he took up a fighting stance?
- 20 A Yes.
- 21 Q And was taking swings and punching and swinging his
22 bag at you?
- 23 A Yes.
- 24 Q And did he at that time hit you?
- 25 A I got hit by so many people all at once, I couldn't

SHEET 4 PAGE 10

Sealed as Confidential Pursuant to Protective Order

25

- 1 specifically -- other than the guy with a beard, a
 2 tattooed beard, on top of me that I distinctively
 3 remember because of it, punching me, I don't know who
 4 exactly hit me.
 5 Q Do you recall seeing Mr. Mahaffy hit, kick or punch
 6 Sgt. Krueger?
 7 A No. And I can't recall any of the specific hits and
 8 punches because, again, there was just too many
 9 people and it happened too quick.
 10 Q All right. So, as I understand your testimony, you
 11 don't remember who specifically hit or kicked you, is
 12 that right?
 13 A I'm guessing I was hit by Mahaffy early on, either by
 14 his bag or a fist, but again when everyone was on
 15 top, there was just a hog pile of people on top, all
 16 hitting us, women, men.
 17 Q What would be the basis of your guess that you were
 18 hit by Mr. Mahaffy?
 19 A He was swinging as we approached, and then when more
 20 people got there and I got knocked down, I mean he
 21 was in closest proximity to do so initially, and just
 22 too many people to identify. So I'm guessing I was
 23 hit by Mahaffy. I remember the guy with the tattooed
 24 beard had clear shots at me.
 25 Q Okay. So as far as whether you were hit by Mahaffy

PAGE 12

Sealed as Confidential Pursuant to Protective Order

27

- 1 going to stop and check it out, but then I thought
 2 this guy is either going to fight or flee, so detain
 3 him. So I went towards him. I think Wally stopped
 4 to look initially when he passed.
 5 Q Okay. So you went towards him to physically detain
 6 him?
 7 A Yes.
 8 Q And were you the closest headed towards him and
 9 Sgt. Krueger was behind you?
 10 A I don't remember.
 11 Q And did you say anything to Mr. Mahaffy as you
 12 approached him?
 13 A No.
 14 Q Do you recall Sgt. Krueger saying anything to
 15 Mr. Mahaffy when he approached him?
 16 A No.
 17 Q Is it fair to say that the two of you approached him
 18 together?
 19 A Yes.
 20 Q And I understand you to say that, like the defensive
 21 line coming through the offensive line, that right as
 22 you approached Mr. Mahaffy you were tackled by a
 23 crowd.
 24 A Yes.
 25 Q Was there any incident that preceded the crowd

PAGE 11

Sealed as Confidential Pursuant to Protective Order

26

- 1 or not, you're making a guess, right?
 2 A Yes.
 3 Q And you don't have any specific recollection of being
 4 hit by Mahaffy?
 5 A No.
 6 Q Do you have any specific recollection of Mahaffy
 7 hitting anybody?
 8 A No.
 9 Q So when you approached Mr. Mahaffy, what were you
 10 going to do to him or what was your intention in
 11 approaching him?
 12 A Well, to detain him, find out why he hit the vehicle
 13 and have police come, and if damage was done to the
 14 vehicle, have him arrested for damage to property.
 15 Q And so it was your intent, at least initially, to
 16 detain Mr. Mahaffy?
 17 A To see if there was damage to detain him, and, if so,
 18 have police come and make an arrest.
 19 Q But I thought you had already looked to see if there
 20 was damage.
 21 A We got out to look, and I came by the other side. So
 22 we got out to look initially, but then we thought --
 23 I thought, well, I'm going to hang onto this guy
 24 before he takes off. So I initially didn't inspect
 25 the vehicle, I didn't take that long. First we were

PAGE 13

Sealed as Confidential Pursuant to Protective Order

28

- 1 tackling you or was that just some spontaneous event
 2 that they charged out at you?
 3 A I thought we were going to get robbed or carjacked,
 4 is what it seemed like to me, that this guy was out
 5 there as a decoy to stop traffic, to do whatever. I
 6 didn't understand the situation. It looked to me
 7 like, you know, either it was a case of mistaken
 8 identity with us or they wanted the vehicle or they
 9 wanted to rob us. I didn't know.
 10 Q So as you're sitting here today, would you describe
 11 that Mr. Mahaffy assaulted you personally?
 12 A Again, I can't say specifically, other than the
 13 person with the tattoo who I saw punch me when I was
 14 below him on the ground. It was just too fast with
 15 too many people to describe who exactly beyond that
 16 hit me.
 17 Q So you don't know for sure whether Mr. Mahaffy
 18 assaulted you or not?
 19 A No.
 20 Q No, what? You're agreeing with the statement?
 21 A I don't know for sure. I think I've testified to
 22 that several times now.
 23 Q So when the crowd assaulted you, did you see what
 24 happened with Sgt. Krueger?
 25 A No. I know he was down too next to me, off to my

SHEET 5 PAGE 14

Sealed as Confidential Pursuant to Protective Order

29

- 1 right, which would have been south, in the street.
 2 Q I'll give you a purple pen now. Could I have you
 3 mark with a No. 3 where it was that you say were
 4 tackled to the ground by the crowd.
 5 A (Indicating).
 6 Q Okay. And you've indicated just about at the
 7 centerline of the street in front of the gap between
 8 Dusty's Bar and the Old Science Renovation,
 9 approximately.
 10 A Yes.
 11 Q And so how far, do you know, were you from
 12 Sgt. Krueger when that happened?
 13 A A little more than an arm's reach, I'm thinking.
 14 Q And then what happened?
 15 A Well, we were getting pounded and exchanging punches
 16 with these people, and I kind of squirmed my way out
 17 from beneath the crowd and got my phone out and
 18 called 911. I called the nonemergency number because
 19 I know that when you call on a cellphone -- I mean I
 20 called the dispatch, I didn't call 911, because when
 21 you call 911 it goes to the State Patrol, so I called
 22 348-2345, which is the direct line to Minneapolis
 23 Communications.
 24 Q Now, I know Sgt. Krueger described that he was
 25 physically pinned down on the ground by members of

PAGE 16

Sealed as Confidential Pursuant to Protective Order

31

- 1 A Yes.
 2 Q And at that time where was Sgt. Krueger?
 3 A I don't recall specifically. I know when they hit us
 4 he was off to my right.
 5 Q When you made your call to dispatch, had the crowd
 6 moved away from you or were you still engaged with
 7 the crowd?
 8 A They were getting Mahaffy -- they were trying to get
 9 Mahaffy out of there, and I remember them saying,
 10 "He's just drunk, he's just drunk," and they were
 11 pulling him, trying to get him free, and I wanted to
 12 maintain him there, so I called and said, "They're
 13 trying to get a damage to property suspect away," or
 14 something like that, and tried to describe what was
 15 going on. And when I went back to try and hang onto
 16 him more, I was assaulted again. There were several
 17 exchanges like that as they were hustling him off
 18 back to where he came from, back to the east side of
 19 the street. There was a group of people assisting
 20 him to leave.
 21 I don't know if he was stunned from blows,
 22 if he was intoxicated or what, but he wasn't in his
 23 right mind from the very beginning of the incident.
 24 So I don't know if it was alcohol, narcotics or what
 25 was impairing his judgment to do this, and they were

PAGE 15

Sealed as Confidential Pursuant to Protective Order

30

- 1 this crowd. Was the same true for you?
 2 A At one point.
 3 Q So you were actually pinned on the ground with your
 4 back flat on the street?
 5 A Yes.
 6 Q Can you describe that for me in detail as to how that
 7 happened and who was doing that to you?
 8 A It happened very quickly, and there was, again, 15 to
 9 20 people that rushed out at the two of us, tackled
 10 us to the ground, and I was down there briefly, and
 11 there was just a lot of people on top of me punching,
 12 etc., and I kind of turned and squirmed and pushed
 13 out from underneath that. I thought, I'm going to
 14 die under here if I don't get out of this crowd.
 15 Q And at that time as you were extricating yourself
 16 from underneath the crowd, would you agree that you
 17 punched and hit individuals?
 18 A Yes.
 19 Q Multiple individuals?
 20 A Yes.
 21 Q Do you recall any women?
 22 A No.
 23 Q And through that effort you managed to stand up?
 24 A Yes.
 25 Q And called the dispatch number?

PAGE 17

Sealed as Confidential Pursuant to Protective Order

32

- 1 trying to help him get out of there, I believe,
 2 before the police came and arrested him.
 3 Q And I did see in one of your statements, and I think
 4 you repeated it just now, is one reason that he may
 5 have seemed groggy or in a stupor or unbalanced is it
 6 might have been a result of you having hit him.
 7 A That's possible.
 8 Q And so you don't dispute that you did hit Jackson
 9 Mahaffy?
 10 A No. Again, I can't say specifically who I hit, and I
 11 can't say specifically who hit me. If it was a
 12 one-on-one situation, obviously, but there was just
 13 too many people on me.
 14 Q Now, I want to go back and just make sure I get all
 15 the detail before you actually called the dispatch.
 16 You had gotten up, and you say the crowd
 17 was moving away and trying to drag Mahaffy away?
 18 A Yes.
 19 Q Or assist him to leave. Were they actually pulling
 20 him on the street?
 21 A Yes.
 22 Q And he was having a hard time standing?
 23 A No, I think he was coming back at us and stuff too.
 24 So he was kind of resisting their efforts to remove
 25 him.

SHEET 6 PAGE 18

Sealed as Confidential Pursuant to Protective Order

33

- 1 Q And you think he was resisting that partially because
2 he was trying to assault you some more?
3 A I don't know what was going through his mind. I
4 think these are questions for Mahaffy, not me. I can
5 only describe what he was doing.
6 Q Okay. But you're describing that he was attempting
7 to come back at you?
8 A At some point, I believe so, yeah. And, again, it
9 happened very rapidly, there was a lot of people
10 involved. I knew they were trying to physically
11 remove him, and they're telling him, "Come on, come
12 on," you know. So I don't know what his motives were
13 in the first place, what they were through the
14 incident, but it appeared to be apparent to me that
15 the people that were around him were trying to get
16 him out of there.
17 Q Now, prior to calling dispatch I had asked you
18 whether you knew where Sgt. Krueger was, and you
19 said, as I understand it, you didn't.
20 A You know, he was off to my right initially, he was
21 down on the ground for a while, he was up, but in a
22 situation like this, you know, you don't have a
23 camera running, and my mind's not photographic to
24 remember specifically at this time when I dialed the
25 phone what this guy was doing. It was just too quick

PAGE 19

Sealed as Confidential Pursuant to Protective Order

34

- 1 of an incident involving too many people and too
2 violent of action at the time.
3 Q So can you recall whether he had extricated himself
4 from the group that he was engaged with at that time
5 though?
6 A At that time, no.
7 Q But if he would have still been under a pile of
8 people that were beating up on him, you would have
9 made it a help call, right?
10 MS. PETERSON: Objection, calls for
11 speculation.
12 THE WITNESS: I called dispatch, and I
13 just said, "We're trying to hold one for damage to
14 property and they're getting away." So I don't know
15 if he was back on his feet at that time, I don't know
16 if the crowd was leaving. Because again after I got
17 on the phone, then people started leaving, and when
18 they saw lights and heard sirens coming, several of
19 these people fled the area. So timing is such that I
20 don't know where Krueger specifically was, if he was
21 back on his feet, if people had left and fled when
22 they saw I called, et cetera.
23 Q Now, when you called, were you still out there near
24 the center of the street?
25 A Somewhere in the street. I couldn't -- again, was I

PAGE 20

Sealed as Confidential Pursuant to Protective Order

35

- 1 in the center, was I to this lane, to that lane? I
2 was still in the street.
3 Q And when you made the call, how long of a time was
4 there between when you made the call and when you
5 could hear sirens or see any indication of officers
6 responding?
7 A Again, it's just too tough to estimate under those
8 circumstances what the exact time of it was. I don't
9 know if it was thirty seconds or three minutes, I
10 really couldn't tell you.
11 Q So you called dispatch on your cellphone?
12 A Yes.
13 Q And you say that the crowd was trying to get Mahaffy
14 out of the area. Then what happened next?
15 A Several people had fled through buildings and
16 whatever in an easterly direction, and then officers
17 arrived. I seem to remember those squads arriving
18 from the south and parked, and we pointed out Mahaffy
19 who had initially did the damage to the vehicle that
20 the whole incident started over, and I was looking
21 for the guy with the beard that assaulted me, and he
22 had fled.
23 Q I thought you said earlier that there was another --
24 that the crowd assaulted you again after you made
25 your initial call to dispatch.

PAGE 21

Sealed as Confidential Pursuant to Protective Order

36

- 1 A Yes, there was -- when I got up and got out of there,
2 I backed up and called -- I called communications,
3 and then they were trying to get Mahaffy over, and
4 when I went back and tried to maintain him again, I
5 got assaulted again.
6 Q Okay. So after you called dispatch the first time,
7 then you went towards the curb and sidewalk area?
8 A I kind of went over here where the squads were
9 arriving in the northbound lane.
10 Q Okay. So were you still in the street?
11 A Again, at that time I believe I was, but it's just
12 too difficult to remember in that chaotic situation
13 specifically where my feet were planted. It wasn't
14 something that I thought I'd be giving a detailed
15 description of in a deposition five and a half years
16 later.
17 Q And as you sit here today, can you actually recall
18 the incident?
19 A Yes, I recall the incident.
20 Q And did you review some material in preparation for
21 your deposition today?
22 A I had looked over my CRA statement that I had
23 provided several years ago.
24 Q And did you look over your supplemental report that
25 you provided?

SHEET 7 PAGE 22

Sealed as Confidential Pursuant to Protective Order

37

- 1 **A Not recently.**
 2 Q And you say you were trying to -- when you moved
 3 over, that you were trying to prevent Mr. Mahaffy
 4 from leaving. Is that a fair characterization of
 5 what you said?
 6 **A Yes.**
 7 Q And how did you do that?
 8 **A Well, I attempted to hang onto him, but then when**
 9 **that would happen, I would get hit.**
 10 Q Okay. So which part of him were you attempting to
 11 hang onto?
 12 **A Wherever I could.**
 13 Q So your testimony is that Mr. Mahaffy was trying to
 14 move away in between your first call to dispatch and
 15 your second call to dispatch?
 16 **A I don't remember specifically when the calls came in.**
 17 **Again, I know that I had called 911 twice or**
 18 **communications twice, but, again, what Mahaffy's**
 19 **specific actions were at that time when I was on the**
 20 **phone, it's just too difficult to put into correct**
 21 **order and placement.**
 22 Q So you were trying to hold onto him, any part of him
 23 you could get?
 24 **A Yes.**
 25 Q And what do you recall holding onto? Did you have

PAGE 24

Sealed as Confidential Pursuant to Protective Order

39

- 1 described his behavior as best I could. It was just
 2 very bizarre behavior of a person under the influence
 3 of maybe angel dust, PCP, acid, I don't know,
 4 yelling, swinging, flaying his arms, swinging the bag
 5 that he had. So whether it was -- you know, if it
 6 was an assaultive behavior, you go right for one
 7 person and punch and kick, and specifically you may
 8 use boxing or wrestling techniques to overtake that
 9 person. He wasn't doing that. He was, again,
 10 jumping around, acting bizarre, swinging, in a karate
 11 stance and looking around, and he had a crazed look
 12 about him. So it wasn't a very calculated assault on
 13 his part.
 14 Q But you understand I'm asking you to describe what
 15 his demeanor and what his actions are after you had
 16 made the first call to dispatch and when you're
 17 trying to detain him. So that description you just
 18 gave is a description of what behavior he was engaged
 19 in when you were trying to detain him after you had
 20 made your first call to communications?
 21 **A The demeanor and behavior and actions that I've**
 22 **described for Mr. Mahaffy, he exhibited that**
 23 **throughout our encounter with him.**
 24 Q And beyond what you've described as swinging and
 25 swinging his backpack, did he actually make physical

PAGE 23

Sealed as Confidential Pursuant to Protective Order

38

- 1 him by the legs, by the arms?
 2 **A I don't recall what area, if any. Shirt, arm, I**
 3 **don't know.**
 4 Q And you're saying that as you were trying to hold
 5 onto Mr. Mahaffy, there were people assaulting you?
 6 **A Yes.**
 7 Q Was Mr. Mahaffy assaulting you?
 8 **A His behavior, I don't -- he was, again, just acting**
 9 **very bizarre. He was yelling unintelligible things,**
 10 **swinging. I mean I described it earlier with the**
 11 **Civilian Review as being on PCP or something like**
 12 **that.**
 13 Q And he was continuing to do that at this time --
 14 **A Yes.**
 15 Q -- when you were trying to grab him and detain him?
 16 MS. PETERSON: Mr. Kroll, make sure he's
 17 done before you start. Go ahead.
 18 BY MR. DELAPLAIN:
 19 Q And he was continuing to exhibit that same behavior
 20 at the time that you were trying to grab him after
 21 you had made the call to dispatch?
 22 **A Yes.**
 23 Q So is that to say he was taking swings at you at that
 24 time?
 25 **A Yes, yes. He did not -- well, I think I've already**

PAGE 25

Sealed as Confidential Pursuant to Protective Order

40

- 1 contact with you by punching you or hitting you or
 2 kicking you?
 3 MS. PETERSON: Objection, asked and
 4 answered. You can answer again.
 5 THE WITNESS: I believe my prior answer
 6 and answer again is I can't say specifically if he
 7 made contact, but I assume so.
 8 BY MR. DELAPLAIN:
 9 Q At that time?
 10 **A At which time are we talking about now?**
 11 Q When you're trying to detain him there by grabbing
 12 onto him when you say that other people were trying
 13 to get him away from the scene.
 14 **A I can't say specifically if he struck me at that**
 15 **time.**
 16 Q But you do recall other people striking you at that
 17 time?
 18 **A Yes.**
 19 Q And who do you specifically recall striking you at
 20 that time?
 21 **A Any one of the 15 to 20 other people that were**
 22 **assaulting us, some of which had fled.**
 23 Q Well, I'm asking you about a specific point in time
 24 when you say they were trying to remove him from the
 25 area. And at that time are you saying there were

SHEET 8 PAGE 26

Sealed as Confidential Pursuant to Protective Order

41

1 still 15 to 20 people assaulting you personally?

2 **A** There was 15 to 20 people in the entire group that

3 assaulted myself and Wally Krueger, and now whether

4 some had already fled at this point, some stuck with

5 it, I don't know the whole time duration of the whole

6 incident, but at some point people started running

7 and leaving the scene.

8 **Q** So as you were grabbing and trying to keep

9 Mr. Mahaffy from departing or being departed by

10 members of the group, was that when the squad cars

11 arrived?

12 **A** Yes.

13 **Q** And so when the squad cars arrived, were you still

14 grabbing onto Mr. Mahaffy?

15 **A** No. I don't know specifically what I was doing, but

16 I remember seeing the lights and sirens coming from

17 the south, and I thought, oh, finally they're here,

18 and then many more people fled. The group that was

19 15 to 20 was down to probably five now.

20 And then we identified Mahaffy, he was

21 still there, he didn't leave. He was in his own

22 world, so to speak. I don't know what he was doing.

23 I don't know if any of us had ahold of him or

24 whatever, but we eventually, and I don't recall

25 specifically how it was officers ended up being

PAGE 28

Sealed as Confidential Pursuant to Protective Order

43

1 remember?

2 **A** I don't know.

3 **Q** Not that you remember?

4 **A** I don't know.

5 **Q** Were you ever up on the northwest corner of Dusty's?

6 **A** Specifically -- these are all approximates of where I

7 was, so I can't say specifically throughout the whole

8 incidents where I was.

9 **Q** Now, when you say you were trying to grab Mr. Mahaffy

10 to keep him from being departed, do you know where

11 Sgt. Krueger was?

12 **A** No, not specifically.

13 **Q** Generally were you keeping track of where he was, or

14 at that time were you just --

15 **A** Through most of the incident he was off to my right,

16 which was a little bit south of me on Marshall.

17 **Q** Okay. So actually further down in front of the Old

18 Science Renovation Factory as opposed to north in

19 front of Dusty's?

20 **A** Sure.

21 **Q** Now, in your supplemental report, if you recall,

22 there's a reference that the individuals who were

23 trying to remove Mahaffy were trying to get him into

24 a vehicle. Do you recall that?

25 **A** No.

PAGE 27

Sealed as Confidential Pursuant to Protective Order

42

1 directed to him, I thought I pointed him out or Wally

2 pointed him out, one of the two or both of us, and

3 then we identified him as the person that struck the

4 vehicle and started the whole incident, and one of

5 the officers detained him then.

6 **Q** Did you also identify him to the arriving officers,

7 meaning Mahaffy, did you identify Mahaffy to the

8 arriving officers as the person who had struck

9 Sgt. Krueger?

10 **A** I don't recall.

11 **Q** Before we move on too far from that, can I have you

12 mark on Deposition Exhibit No. 1 by maybe putting a 4

13 at the location where you said you were grabbing

14 Mr. Mahaffy, trying to keep him from being removed

15 from the area.

16 **A** (Indicating).

17 **Q** So, again, it's on the street but near the sidewalk

18 area on the northwest corner of the Old Science

19 Renovation, Inc., approximately?

20 **A** Sure.

21 **Q** In that area approximately in front of where the gap

22 is that exists between Dusty's Bar and Old Science

23 Renovation?

24 **A** Somewhere in that area.

25 **Q** Now, were you ever up on the sidewalk, that you

PAGE 29

Sealed as Confidential Pursuant to Protective Order

44

1 **Q** In that time between when it was that you made the

2 call to dispatch and when the officers arrive, the

3 squad cars and uniformed officers arrived, at any

4 time do you have a specific recollection of where

5 Sgt. Krueger was or what he was doing?

6 **MS. PETERSON:** Objection, asked and

7 answered. You can answer again.

8 **THE WITNESS:** Just to the right of the

9 assault on Marshall Avenue throughout the incident

10 was where he was.

11 **BY MR. DELAPLAIN:**

12 **Q** And so you're pretty sure that you knew his location

13 during that time.

14 **A** Yes.

15 **Q** Now, when is it that you made the second call to

16 dispatch?

17 **A** I'm guessing within a minute of the first one.

18 **Q** But is that after you were trying to grab and prevent

19 Mr. Mahaffy from being removed?

20 **A** My memory is cluttered with regard to this. I know

21 that I called initially and then later into it, but

22 again, specifically what Mr. Mahaffy's -- you know, I

23 didn't know who Mr. Mahaffy was at the time, I didn't

24 know who any of these people were at the time, and

25 who specifically was doing what, including where

SHEET 9 PAGE 30

Sealed as Confidential Pursuant to Protective Order

45

1 specifically I was when I made the calls, I'm
 2 incapable of determining that.
 3 Q I'm not asking you to specifically determine where
 4 everybody was, I'm asking you whether you recall
 5 whether your second call to dispatch was after the --
 6 back where you just described you were trying to
 7 detain Mr. Mahaffy from being removed.
 8 A I don't know specifically what actions were taken
 9 before, during or after the calls.
 10 Q Now, I've reviewed your statement with the Civilian
 11 Review Board, and I know you said that you've
 12 reviewed that at some time, correct?
 13 A Yes.
 14 Q And in that statement, is it true that in the course
 15 of this incident of trying to detain Mr. Mahaffy that
 16 you did indeed kick one of the other persons in the
 17 area?
 18 A I think what I described in my CRA was I punched and
 19 kicked at many people during the process, and at one
 20 point when Mr. Mahaffy was being escorted away and I
 21 was trying to hang onto him, I kicked at another
 22 person who was trying to drag him from me.
 23 Q And is that in that same area where you've marked
 24 a 4?
 25 A In between in here. At some point he was in the

PAGE 32

Sealed as Confidential Pursuant to Protective Order

47

1 that supplemental report, if you know?
 2 A Within a couple days. It was on 5/17, and I'm not
 3 sure of the incident date.
 4 Q I believe it's 5/14, for the record, May 14th was the
 5 day of the incident. So the next day you think you
 6 made up this supplemental report?
 7 A Yes.
 8 Q So at that point everything would have been fresh in
 9 your mind?
 10 A Yes.
 11 Q And so everything in this report would have been
 12 true?
 13 MS. PETERSON: I believe he said it was
 14 5/17, not the day after. You said the incident was
 15 5/14. The document says 5/17.
 16 MR. DELAPLAIN: Okay, I misheard him. I
 17 thought he said 5/15.
 18 MS. PETERSON: The document says it right
 19 at the top.
 20 THE WITNESS: 5/17/04.
 21 MR. DELAPLAIN: So three days afterwards.
 22 THE WITNESS: Correct.
 23 (Kroll Deposition Exhibit 3
 24 marked for identification)
 25 BY MR. DELAPLAIN:

PAGE 31

Sealed as Confidential Pursuant to Protective Order

46

1 middle of the street or even the southbound lane, and
 2 then as this incident progressed, he moved easterly
 3 through the northbound lane. Can we take just a
 4 short restroom recess?
 5 MR. DELAPLAIN: Sure.
 6 (Recess)
 7 (Kroll Deposition Exhibit 2
 8 marked for identification)
 9 BY MR. DELAPLAIN:
 10 Q Lt. Kroll, I'm handing you what has been marked as
 11 Exhibit No. 2. Can you identify that document for
 12 me?
 13 A Yes, it's a statement that I made after the incident
 14 at the direction of the investigator,
 15 Sgt. Christiansen.
 16 Q And is this what is commonly referred to as a
 17 supplemental report?
 18 A Yes.
 19 Q And is this a report that's prepared in regard to an
 20 incident that happens -- that Minneapolis police
 21 officers prepare to report on incidents that happen?
 22 A Yes.
 23 Q And is everything in there true and correct?
 24 A Yes.
 25 Q How long after the incident was it that you made up

PAGE 33

Sealed as Confidential Pursuant to Protective Order

48

1 Q I'm showing you what's been marked as Exhibit No. 3.
 2 Can you identify that document for me?
 3 A That's the Civilian Review statement I provided.
 4 Q And do you recall what date you provided that
 5 statement?
 6 A That says December 5 of '05.
 7 Q And if I could ask you to turn to the last page of
 8 what's been marked as Exhibit No. 3, is that your
 9 signature on the last page?
 10 A Yes, it is.
 11 Q And when did you sign this document?
 12 A 2/15 of '06.
 13 Q And you've had a chance to review this transcript
 14 since the time you made the statement?
 15 A The CRA document?
 16 Q Yes.
 17 A Yes.
 18 Q And do you agree that the transcript is a true and
 19 correct transcript of the statement that you gave to
 20 the investigator?
 21 A Yes.
 22 Q And I notice there are a couple corrections here and
 23 there in the document. I just want to direct your
 24 attention to it.
 25 MS. PETERSON: Page four.

SHEET 10 PAGE 34

Sealed as Confidential Pursuant to Protective Order

49

- 1 BY MR. DELAPLAIN:
 2 Q For example, on page four of Exhibit No. 3, if I
 3 could have you turn to page four, do you see there on
 4 the first answer from the top where there's some
 5 handwriting and some words crossed off?
 6 A Yes.
 7 Q Is that your handwriting on there?
 8 A Yes, it is.
 9 Q So are those corrections you made to the transcript?
 10 A Yes, it is.
 11 Q So you had a chance to review this and make
 12 corrections to anything that you think may not have
 13 been correct.
 14 A Yes.
 15 Q And is everything within this statement true and
 16 correct?
 17 A Yes.
 18 Q I want to direct your attention to page No. 10.
 19 Earlier I was asking you about whether you had kicked
 20 one of the individuals that was present that night.
 21 And I want you to review, if you would, about the
 22 last half of this page No. 10 of the statement you
 23 gave to the Civilian Review Authority, and then I'll
 24 ask you again about that.
 25 A Okay.

PAGE 35

Sealed as Confidential Pursuant to Protective Order

50

- 1 Q The third answer up from the bottom here, I
 2 understand that what you told the investigator was
 3 that, "There was a guy trying to drag Mahaffy out of
 4 there, and when I pulled back I kicked a guy once or
 5 twice to get him to kick down." Now, do you see
 6 where it says that?
 7 A Yes.
 8 Q Okay. So does that refresh your recollection as to
 9 whether you actually did kick someone that night?
 10 MS. FUNDINGSLAND: Excuse me, counsel,
 11 but I believe it says, "kick him down," not, "kick
 12 down."
 13 MR. DELAPLAIN: Okay. If I misspoke --
 14 MS. FUNDINGSLAND: Yes. Maybe you just
 15 want to read it again.
 16 MR. DELAPLAIN: I'll read it again.
 17 Well, maybe I'll read this and the next paragraph.
 18 BY MR. DELAPLAIN:
 19 Q So that paragraph actually starts at the end of the
 20 answer to the fifth question, or at the end of the
 21 fifth question is your fifth answer. "There was one
 22 guy that was trying to drag --" and then the
 23 investigator says, "Mahaffy?" and your answer is,
 24 "Mahaffy out of there and when I pulled back I kicked
 25 a guy once or twice to get him to get him to kick him

PAGE 36

Sealed as Confidential Pursuant to Protective Order

51

- 1 down. He was picking him up and he was -- we kind of
 2 struggled over --" and the investigator says,
 3 "Mahaffy?" then your answer continues, "Mahaffy, and
 4 I was pulling him away, I didn't have a free hand. I
 5 was trying to hang onto Mahaffy because the squads, I
 6 could hear 'em coming. And I kicked this guy back
 7 away from me a couple times. Kick him back because
 8 my hands were tied up. So there was somebody and I
 9 couldn't identify who that was."
 10 So does that refresh your recollection as
 11 to actually whether you did kick someone that night?
 12 A Yes.
 13 Q Okay. And now you agree that indeed you did kick
 14 someone that night.
 15 A Yes.
 16 Q And after reading that, can you give me a description
 17 of what happened when that incident occurred, or are
 18 you just relying on having read the questions and
 19 answers to the questions there?
 20 A There was a struggle. This person was trying to get
 21 Mahaffy out of there. I was trying to keep Mahaffy
 22 there. We both had ahold of him, there was a
 23 struggle, and he came towards me, and in the struggle
 24 over Mahaffy I didn't want to lose my hold of Mahaffy
 25 because apparently at this time I had ahold of him, I

PAGE 37

Sealed as Confidential Pursuant to Protective Order

52

- 1 don't know specifically how, and in order to get this
 2 other person away, I kicked at him, kicked at him
 3 once or twice.
 4 Q Do you recall which part of Mahaffy you were holding
 5 onto at that point?
 6 A No.
 7 Q Do you recall where you were other than where you've
 8 indicated the No. 4 on Exhibit No. 1? Do you think
 9 you were there or some other location?
 10 A Somewhere near 4 there.
 11 Q And so when you say he was trying to get Mahaffy
 12 away, you were holding onto Mahaffy, and was he also
 13 grabbing at Mahaffy and pulling him?
 14 A Between that and striking at me.
 15 Q And do you recall what part of his body you kicked
 16 him upon?
 17 A No.
 18 Q So as you're holding onto Mahaffy, he's coming --
 19 MS. PETERSON: Objection. You keep using
 20 these gestures as to a hold. He's never said -- with
 21 your gestures, I don't want your gestures to be on
 22 this video at all. He has never said he had a hold
 23 on Mahaffy like you are demonstrating for the camera.
 24 MR. DELAPLAIN: I'm not demonstrating
 25 anything for the camera because I clarified before

SHEET 11 PAGE 38

Sealed as Confidential Pursuant to Protective Order

53

1 the deposition that the camera is not actually
 2 recording me.
 3 MS. PETERSON: All right. If the camera
 4 is not recording you and if you did not have a hold
 5 on Mr. Mahaffy like he is demonstrating, please
 6 clarify.
 7 BY MR. DELAPLAIN:
 8 Q Can you clarify for me by making arm gestures as
 9 to --
 10 A I'm not understanding.
 11 MS. PETERSON: My objection is it says
 12 that, "I was trying to hang onto Mahaffy because the
 13 squads, I could hear 'em coming." I think what he
 14 wants to know is how you had or were trying to hang
 15 onto Mahaffy.
 16 THE WITNESS: I don't remember
 17 specifically how. I think I testified earlier that
 18 wherever I could, whether it was clothing, arm,
 19 torso, whatever I could hang on to, and I don't
 20 recall the specifics of how I grasped anything.
 21 Q But right at that moment, according to your
 22 statement, you didn't have a hand free.
 23 A That is what it says, right.
 24 Q Okay. So is it safe to assume that you were using
 25 two hands to hold onto Mahaffy at that point?

PAGE 40

Sealed as Confidential Pursuant to Protective Order

55

1 Q Now, do you recall if that individual fell down?
 2 A I don't recall.
 3 Q Is it possible that they fell down and you continued
 4 to kick them?
 5 MS. PETERSON: Objection, calls for
 6 speculation.
 7 THE WITNESS: I don't believe that
 8 occurred.
 9 BY MR. DELAPLAIN:
 10 Q And that individual that you kicked, is that the
 11 gentleman who you described in your report as with a
 12 beard tattoo, if you remember?
 13 A I don't remember, and there was more than just one
 14 person there also, so I can't specifically say. I
 15 know that he was the one that I -- only because of
 16 the significance of the facial tattoo, that he was
 17 one of those parties that was involved in trying to
 18 get Mahaffy away, and I remember him on top of me in
 19 the crowd earlier.
 20 Q Now, on the very bottom of page ten, it says -- I
 21 guess it's the same question. The investigator asked
 22 you, "You don't know if it was the tattooed guy or
 23 not?" and you say -- the transcription says, "M-mmm."
 24 Is that a negative, that at that time you didn't know
 25 who it was?

PAGE 39

Sealed as Confidential Pursuant to Protective Order

54

1 A Yes.
 2 Q And do you recall as you were using your two hands to
 3 hold onto Mahaffy what direction the person you
 4 kicked was coming at you from?
 5 A I seem to recall them trying to get him to the east
 6 side of the street away, like towards the buildings,
 7 towards the Old Science Restoration and Dusty's Bar.
 8 Q And so you're to the west of that?
 9 A Yes.
 10 Q So that I understand your positioning, you're to the
 11 west of -- on Marshall Street Northeast facing
 12 towards the east, approximately, and you're trying to
 13 hold onto Mahaffy with two hands, and then there's
 14 someone else trying to pull Mahaffy to the east.
 15 A Correct.
 16 Q And at the same time you say coming towards you.
 17 A Correct.
 18 Q Well, when you were kicking at that individual then,
 19 were you standing up?
 20 A Yes.
 21 Q So does that mean that Mahaffy also was standing up?
 22 A Yes.
 23 Q And does that mean that the individual who you kicked
 24 was standing up?
 25 A Yes.

PAGE 41

Sealed as Confidential Pursuant to Protective Order

56

1 A Yeah, I didn't -- yeah, I didn't know who any of the
 2 people were.
 3 Q And so after that occurred, after you kicked this
 4 individual, do you recall whether then Mahaffy was
 5 removed from your holding onto him?
 6 A I don't remember if he was removed or free. I think
 7 I answered this earlier. When the squads arrived, I
 8 specifically don't know where I was and where Mahaffy
 9 was on the arrival of the first squad.
 10 Q So could it be that the arrival of the first squads
 11 were at the time or prior to the incident that you
 12 were just describing where you kicked someone?
 13 MS. PETERSON: Objection, calls for
 14 speculation. You can answer if you know.
 15 THE WITNESS: I don't know the answer to
 16 that.
 17 BY MR. DELAPLAIN:
 18 Q So the squad cars may have already been there when
 19 you kicked that individual?
 20 A Oh, I should rephrase that. I don't believe there
 21 was any punching or kicking going on after the squads
 22 arrived.
 23 Q And do you recall when the squads arrived whether you
 24 still had your hands on Mr. Mahaffy?
 25 MS. PETERSON: Objection, asked and

SHEET 12 PAGE 42

Sealed as Confidential Pursuant to Protective Order

57

1 answered. You can answer again.
 2 THE WITNESS: I don't remember
 3 specifically, again. It's getting kind of redundant,
 4 but I'll say it again for the record. I don't
 5 remember specifically where I was, if I had ahold of
 6 Mahaffy when they came, and where in the
 7 street/sidewalk we were again.
 8 Q Do you remember when the first officers arrived?
 9 A No.
 10 Q Do you remember who the first officers that you
 11 recognized were?
 12 A No. And, again, to spin the clock back to that
 13 incident, I didn't know any of those officers
 14 specifically. I mean I knew names and faces.
 15 Q Do you have any recollection of Mr. Mahaffy being
 16 arrested?
 17 A Later on, yeah, they arrested him.
 18 Q Do you recall identifying Mr. Mahaffy to officers?
 19 A I know that he was taken into custody there, and I
 20 can't recall if it was specifically me that told one
 21 of the officers or Wally that told one of the
 22 officers, and, if so, which officer was told that he
 23 was the one that did this. As I sit here today, I
 24 don't recall which one that was. But I know Mahaffy
 25 was booked, he had thrown up in the back of the squad

PAGE 44

Sealed as Confidential Pursuant to Protective Order

59

1 A What paragraph are we in here?
 2 Q It's right near the bottom, right there (indicating).
 3 A Okay. Yes.
 4 Q So does that refresh your recollection as to whether
 5 it was you who identified Mahaffy?
 6 A Well, it does, and it's important to note that this
 7 supplemental report that I gave at the direction of
 8 Sgt. Christiansen occurred three days after the
 9 incident, so everything was much more fresh in my
 10 mind.
 11 So, in my mind, this would probably trump
 12 the statement and my testimony today because of the
 13 fact that it was three days, and then we go to the
 14 CRA statement, that's a year and a half after the
 15 incident, and now we're five and a half years later.
 16 Q Okay. So you'd agree, I guess in general, that if
 17 there's a statement in Exhibit No. 2 that contradicts
 18 some later statement you made, that Exhibit No. 2
 19 would be more likely to be correct because it was
 20 made closer in time to the incident?
 21 MS. PETERSON: Objection, asked and
 22 answered. He just answered that.
 23 THE WITNESS: The answer to the question
 24 is yes. I would think the most accurate of anything
 25 would have been Exhibit No. 2, my supplement of the

PAGE 43

Sealed as Confidential Pursuant to Protective Order

58

1 car and stuff.
 2 Q Now, when you're actually holding onto Mahaffy, in
 3 your mind is that detaining him?
 4 A I don't think I had that control over him because,
 5 again, I had several people interfering with my
 6 efforts to detain him. I was being assaulted by
 7 several people while I was attempting to detain him,
 8 and, you know, unfortunately I wasn't that big enough
 9 or strong enough to have complete control over a
 10 person while I was being assaulted by several others.
 11 Q So do you think -- did you ever detain Mr. Mahaffy,
 12 you, yourself?
 13 A Well, he didn't get away before the arrival of
 14 officers, and he was booked, so I guess in hindsight
 15 he was successfully detained from leaving the area
 16 before officers arrived.
 17 Q And I want to direct your attention to near the next
 18 to the last paragraph of your supplemental report,
 19 which is marked as Exhibit No. 2, and this goes back
 20 to a question I asked you recently.
 21 What the supplemental report says is, "When
 22 uniformed officers arrived, I identified AP-1 Mahaffy
 23 as the person who did damage to Sgt. Krueger's
 24 vehicle and initiated the assault on us." Do you see
 25 where it says that?

PAGE 45

Sealed as Confidential Pursuant to Protective Order

60

1 incident.
 2 BY MR. DELAPLAIN:
 3 Q After uniformed officers arrived, do you recall
 4 specifically speaking to any of the uniformed
 5 officers beyond identifying Mr. Mahaffy?
 6 A No.
 7 Q Do you recall going down and meeting with some of the
 8 officers in the parking lot of the Grain Belt
 9 Brewery?
 10 A There was a parking lot -- I don't remember the
 11 specific lot, but I think like a block to the south
 12 and east of there is where we met the paramedics and
 13 the officers met.
 14 Q And did you give a statement to any of the officers
 15 that night?
 16 A I didn't take a -- you know, what would be a formal
 17 statement. I spoke with a couple of them, and I
 18 don't remember who or what other than, you know,
 19 identifying the person that did -- you know, we
 20 identified Mr. Mahaffy. I said we were assaulted by
 21 several that got away. I gave them a general
 22 overview of what happened, but there was no -- we
 23 have statements in the police department and, you
 24 know, they're formal question/answer statements, and
 25 that didn't occur here.

SHEET 13 PAGE 46

Sealed as Confidential Pursuant to Protective Order

61

- 1 Q So, as I understand it, you didn't give a formal
2 statement to any of the officers, but you talked to
3 them in essence informally and told them your version
4 of the events.
5 A Sure.
6 Q And identified Mr. Mahaffy, who they already had in
7 the squad car, but you further identified him as
8 being the one who had hit Wally Krueger or
9 Sgt. Krueger's car?
10 A Yes.
11 Q Now, referencing your supplemental report, in the
12 second paragraph there, I guess in the second
13 sentence, you describe when you approached
14 Mr. Mahaffy, you say, "He approached us, punching and
15 swinging his bag at us, and at one point struck
16 Sgt. Krueger in the eye, causing severe swelling."
17 Do you see where it says that?
18 A Yes.
19 Q Now, I know I asked about that earlier, and I think
20 earlier you had said that you don't recall
21 specifically seeing Mr. Mahaffy strike Sgt. Krueger.
22 A Today, no. And after reviewing my supplement here,
23 which has been quite sometime since I've seen it,
24 again I would have to place more credence in this
25 than five and a half years later on today's date.

PAGE 48

Sealed as Confidential Pursuant to Protective Order

63

- 1 Mr. Mahaffy that he struck Sgt. Krueger in the eye?
2 A Yes.
3 Q At any point do you recall Sgt. Krueger's wife being
4 out of the vehicle involved in the melee?
5 A I think she was out of the vehicle. I don't know if
6 she was involved. I was just occupied with too many
7 people myself to pay attention to the specifics of
8 what was occurring around me in other areas.
9 Q Do you recall whether Sgt. Krueger tried to go into
10 the Old Science Renovation, Inc.?
11 A I don't recall that.
12 Q Do you recall Sgt. Krueger having any loud verbal
13 altercations with specific individuals in the crowd?
14 A No.
15 Q I know in your supplement, in the statement you gave
16 to the Civilian Review Authority, you emphasized in
17 there that if on that night you would have had a
18 weapon, that you would have used it.
19 A Yes.
20 Q Do you still stick with that?
21 A Yes.
22 Q And can you describe that to me or your justification
23 for saying that?
24 MS. PETERSON: Objection, calls for
25 speculation. You can answer.

PAGE 47

Sealed as Confidential Pursuant to Protective Order

62

- 1 So, yes, in my supplement it appears that after the
2 incident I identified him as the one that struck
3 Wally Krueger.
4 Q In your supplement you describe that he had struck
5 Wally Krueger when you approached him initially,
6 right?
7 MS. PETERSON: I'm going to object.
8 That's not actually what the document says. It
9 mischaracterizes it.
10 THE WITNESS: Can you ask the question
11 again, please?
12 MR. DELAPLAIN: Can you read back my
13 question, please.
14 (The requested portion was read)
15 THE WITNESS: No, it looks like he struck
16 the truck when we approached him initially, and then
17 in the next paragraph, "As we approached, he was
18 screaming very bizarre obscenities and took up a
19 fighting stance with the bag he was carrying which
20 appeared to have a heavy object inside. He
21 approached us, punching and swinging this bag at us,
22 and at one point struck Sgt. Krueger in his eye
23 causing severe swelling."
24 Q Now, in reading that, would you interpret that as
25 being that it was when you initially were approaching

PAGE 49

Sealed as Confidential Pursuant to Protective Order

64

- 1 THE WITNESS: Well, being assaulted by a
2 group of 15 to 20 people, assaulting two after damage
3 to a vehicle took place, for all I knew we were being
4 victimized in a robbery of person or a carjacking and
5 it's a felony being committed against us at that
6 point, and then if I would have had a firearm on me,
7 the chances of me being assaulted by so many people,
8 if I would have been knocked unconscious, that
9 firearm could have been removed from me and used
10 against me.
11 So I think as the questioning went in the
12 CRA statement, he was trying to compare me to being
13 on duty, and if I were on duty with a firearm, being
14 assaulted by a crowd of that many people, I would
15 have pulled my firearm out to secure it, and if I
16 felt in this situation in fear for my life, I would
17 have used it.
18 Q Now, as part of your answer you said something about
19 a carjacking, but there wasn't actually a carjacking
20 that occurred, right?
21 A No.
22 (Kroll Deposition Exhibit 4
23 marked for identification)
24 MS. PETERSON: Before you look at
25 Exhibit 4, these are your Civilian Review Police

SHEET 14 PAGE 50

Sealed as Confidential Pursuant to Protective Order

65

- 1 Authority, to the extent that none of these or any of
 2 these did not result in any final disposition of a
 3 disciplinary matter, this is all private personnel
 4 data that is protected by the confidential agreement.
 5 BY MR. DELAPLAIN:
 6 Q Lt. Kroll, do you recognize this document?
 7 A Yes.
 8 Q And have you seen this before or a similar printout?
 9 A Yes.
 10 Q And what is this document?
 11 A It's an officer's record within the Civilian Review
 12 Authority.
 13 Q And is this your record?
 14 A Yes.
 15 Q And each of these case numbers on the left-hand
 16 column underneath where it says badge, do each of
 17 those separate case numbers represent a complaint
 18 that was filed against you with the Civilian Review
 19 Authority?
 20 A I don't know how the Civilian Review does their
 21 coding. It's a case number that -- whether it was
 22 against me -- I don't know if it's against me or I
 23 made statements in them. I'm not familiar with their
 24 reporting policies and procedures.
 25 Q Do you know how many complaints have been filed

PAGE 52

Sealed as Confidential Pursuant to Protective Order

67

- 1 A I don't know.
 2 Q You don't remember whether there have been any
 3 complaints that you know of within the past five
 4 years?
 5 MS. PETERSON: Objection, asked and
 6 answered. You can answer again.
 7 THE WITNESS: I don't know.
 8 BY MR. DELAPLAIN:
 9 Q I want to run through these real quickly and see if
 10 you can tell me whether you even remember what these
 11 refer to. The first now is badge number. Up there
 12 in the upper left-hand it says badge number, and
 13 underneath that is 03874. Is 03874 your badge
 14 number?
 15 A Yes.
 16 Q And it has your name. The first entry under that is
 17 02-1799. Do you see what I'm talking about?
 18 A Yes. And I might be able to speed it up because all
 19 of these case numbers, allegations, findings that
 20 we're looking at are going to mean nothing to me
 21 unless you've got some specific cases with it.
 22 Rather than take the time -- if you want
 23 to, you're entitled, obviously, but if you want to go
 24 through every one of these and ask me if I know what
 25 this is and that is, the answer is going to be the

PAGE 51

Sealed as Confidential Pursuant to Protective Order

66

- 1 against you with the Civilian Review Authority?
 2 A No.
 3 Q But if a complaint is filed against you at the
 4 Civilian Review Authority, do you become aware of
 5 that?
 6 A Not all the time. Sometimes you'll find out later
 7 that, you know, you were misidentified, and in the
 8 course of the investigation they don't even notify
 9 you, you know. There could be a misidentification
 10 through badge number, photo lineup, and, you know,
 11 maybe they determine that you were off duty or in a
 12 different precinct on a different call at that time,
 13 and a generation of the case number and the incident
 14 will still be there, and they won't even notify you
 15 if during the course of the investigation they
 16 determine this couldn't have been him because he was
 17 here. So not necessarily, no.
 18 Q So it might happen that there's actually a complaint
 19 filed with the Civilian Review Authority against you
 20 and you wouldn't know about it?
 21 A Yes.
 22 Q Since this incident with Mr. Mahaffy, do you know
 23 whether there have been any additional complaints
 24 filed against you with the Minneapolis Civilian
 25 Police Review Authority?

PAGE 53

Sealed as Confidential Pursuant to Protective Order

68

- 1 same for all of what I'm looking at, and that is by
 2 what I'm provided here, I don't know what any of it
 3 means.
 4 I can take the chart and graph and tell you
 5 what the findings and allegations mean by going
 6 through the chart. If you would like to do that, I
 7 guess that's your entitlement, but I can spare you a
 8 lot of time because they mean nothing to me case
 9 number wise.
 10 Q Do you know, have you had any cases, complaints
 11 against you filed with the Minneapolis Civilian
 12 Police Review Authority where there has been a
 13 sustained finding?
 14 A I'd have to look through on this. I can tell you
 15 that in the case that we're here about they sustained
 16 it against me and discipline was imposed, but it's
 17 not final yet, it's still being disputed. There's an
 18 arbitration, I'm told, this coming year on that. So
 19 there was a sustained finding. Now, whether those
 20 findings in the end will be overturned, we don't
 21 know. And I don't know if there was anything
 22 sustained where discipline was not imposed.
 23 And CRA findings are not final disposition.
 24 It comes to the Police Department, and then they
 25 review it and you have a panel there, and sometimes

SHEET 15 PAGE 54

Sealed as Confidential Pursuant to Protective Order

69

1 they don't sustain. So it's a very confusing
2 situation between the Civilian Review Authority and
3 how it relates to your final record within the MPD.

4 But I can tell you that I don't believe I
5 have anything sustained where they imposed discipline
6 other than the case that we're here about.

7 MS. PETERSON: Can we just shortchange
8 this for a minute? If you look at the badge number
9 and you look at the number, you've got 42153, and if
10 you look at the CRA case, which we're just using,
11 which is Exhibit 3, it has that same number on it.
12 So that is what we were talking about.

13 THE WITNESS: 42153? I don't see that
14 in here. Oh, okay, 04-2153.

15 BY MR. DELAPLAIN:

16 Q And when you're referring to that in the left-hand
17 column, the number 04-2153, that's referring to the
18 complaint with the Civilian Police Review Authority
19 that was made in this case, is that right?

20 A That's what it says on Exhibit 3, yes.

21 Q And in regard to this case, there was a sustained
22 finding, at least for now?

23 A Yes.

24 Q And it was a finding of excessive force?

25 MS. PETERSON: Objection, the document

PAGE 56

Sealed as Confidential Pursuant to Protective Order

71

1 MS. PETERSON: Objection. Announced by
2 whom? Vague.

3 MR. DELAPLAIN: Well, I'm asking him.

4 THE WITNESS: Well, I don't know if you
5 could call initially several years after the
6 incident, but the discipline was imposed -- it would
7 be two years ago in January that it was imposed. So
8 it was imposed, what, three years after the incident.

9 MR. DELAPLAIN: Well, maybe you can just
10 run through the procedure with me.

11 MS. PETERSON: Objection. If you would
12 like the procedure, he is just an officer in the
13 fleet force, he's a Lieutenant, and if you would like
14 the disciplinary procedure for an officer, he is the
15 wrong person to ask for that. He is just a person
16 that can be disciplined and that is subject to the
17 grievance procedure under the collective bargaining
18 agreement. Even though he is an officer of the
19 union, that document and the collective bargaining
20 agreement speaks for itself, as do the CRA rules, as
21 do the rules for the police department.

22 So all he can give you is a general
23 understanding, and actually this is not the right
24 witness, other than what he has experienced in his
25 own discipline, and it's not going to get you where

PAGE 55

Sealed as Confidential Pursuant to Protective Order

70

1 speaks for itself. Go ahead and answer.

2 THE WITNESS: An allegation of excessive
3 force, findings sustained at hearing. And then an
4 allegation, inappropriate conduct, and findings
5 sustained at hearing.

6 MS. PETERSON: May we have the record
7 reflect that all Lt. Kroll did was look at the
8 document and line up the codes with the numbers in
9 the document.

10 MR. DELAPLAIN: And was any discipline
11 imposed upon you as a result of there being these
12 sustained findings?

13 MS. PETERSON: Objection, asked and
14 answered. You can answer again.

15 THE WITNESS: Yes, there was.

16 BY MR. DELALAIN:

17 Q And what was that discipline?

18 A A 160-hour suspension.

19 Q Was there any discipline imposed beyond that?

20 MS. PETERSON: Objection, asked and
21 answered.

22 THE WITNESS: No.

23 MR. DELAPLAIN: So was that the
24 discipline that initially was imposed or was it some
25 discipline announced that was later not imposed?

PAGE 57

Sealed as Confidential Pursuant to Protective Order

72

1 you want. If you want to ask those questions, you
2 have the wrong person.

3 MR. DELAPLAIN: Do you have an objection?

4 MS. PETERSON: I do. The objection is
5 that this is irrelevant from this person, and he has
6 no direct knowledge other than his own discipline.

7 MR. DELAPLAIN: He certainly has direct
8 knowledge of his own discipline. He's already
9 testified that he's sat in on thousands of hearings
10 regarding this.

11 MS. PETERSON: Lack of foundation.

12 MR. DELAPLAIN: Okay. So let me run
13 through the procedure with you a little bit. At the
14 conclusion -- I don't know, how many phases would you
15 say there are in this Minneapolis Civilian Police
16 Review Authority proceeding from the point that a
17 complaint comes in until it's ended?

18 MS. PETERSON: Objection. Again, lack of
19 foundation. You can answer if you know.

20 THE WITNESS: The Civilian Review
21 Authority is such a complicated endeavor, I think
22 there's people there that don't understand it.
23 There's certainly people within the police
24 administration that don't understand it, within the
25 City Council that don't understand it. It's a monkey

SHEET 16 PAGE 58

Sealed as Confidential Pursuant to Protective Order

73

1 on their back that they just can't seem to shed and
2 they can't figure out.

3 But my experience in the Civilian Review
4 Authority is a person makes a complaint and the
5 investigator interviews them, much like an
6 investigator would interview on the MPD side of the
7 house in Internal Affairs. The investigator
8 interviews all witnesses and parties involved, the
9 complainant, witnesses, subject officers.

10 When that is done, it goes before some type
11 of panel hearing at the Civilian Review Authority and
12 they make a determination of some type, and when that
13 is done, it's forwarded over to the police
14 administration for review, and I don't know if that
15 goes to Internal Affairs or to higher ranking
16 officers within the officers' chain of command, and
17 then they review it and they determine -- they have a
18 panel hearing, and then they call the officer in and
19 determine if they're going to impose discipline, and
20 then the department has the final authority of
21 discipline, but the department does not have the
22 authority to change a finding of Civilian Review.

23 So what they do in many cases is we'll
24 leave the finding whatever it's deemed to be at the
25 Civilian Review side of the house and not impose

PAGE 60

Sealed as Confidential Pursuant to Protective Order

75

1 punishment off on the officer, first and foremost,
2 whether they're terminated or suspended, and, you
3 know, in cases of termination they keep putting it
4 back and putting it back, and generally we don't get
5 in for -- when they fire an officer, I usually tell
6 them nine months before we get it. It's an
7 excessively long process.

8 On the union side of the house, we try to
9 expedite the process, obviously in favor of the
10 officer to get him before a hearing, and my theory is
11 that's the way that the City chooses to impose
12 discipline before the ultimate overturning of the
13 finding for inappropriate discipline.

14 Q Now, in regard to this case you said there's a second
15 panel that's impaneled where there's a determination
16 of discipline after a finding by the Civilian Review
17 Authority. Is that what I heard you say?

18 MS. PETERSON: Objection, lack of
19 foundation with regard to all of this. You can ask
20 as many irrelevant questions as you want, but this is
21 not relevant to what is going on here.

22 MR. DELAPLAIN: You've made your
23 objection.

24 MS. PETERSON: You can answer if you
25 know.

PAGE 59

Sealed as Confidential Pursuant to Protective Order

74

1 discipline on the MPD side if they don't agree. I
2 don't think they have the legal authority to change
3 it.

4 If in a case they impose discipline with an
5 officer, an officer is entitled to a grievance
6 procedure in the collective bargaining agreement, and
7 that is union officials meeting with city officials
8 in the police department through the steps, and then
9 the ultimate finding being binding arbitration and
10 the case is presented before an arbitrator. That's
11 about the best way I can nutshell the whole process
12 for you.

13 Q Thank you for that explanation. As I understand it,
14 in the procedure regarding this case, you're at the
15 stage where there's going to be an arbitration.

16 A Yes.

17 Q And do you know when that is scheduled for?

18 A It's not been scheduled. The City has been delaying
19 for years.

20 Q Do you know why the City has been delaying for years?

21 MS. PETERSON: Objection, calls for
22 speculation. You can answer if you know.

23 THE WITNESS: In most discipline cases,
24 in my experience on the Union Board, the City
25 excessively delays in all of them, trying to impose

PAGE 61

Sealed as Confidential Pursuant to Protective Order

76

1 THE WITNESS: There was a separate panel
2 within the Minneapolis Police Department that
3 convened a panel hearing in this case.

4 BY MR. DELAPLAIN:

5 Q And is that the panel that announced or made a
6 determination of what discipline would be imposed?

7 A Yes.

8 Q And the discipline that was recommended by that
9 panel, is that the discipline that ended up being
10 imposed?

11 A I don't recall if it changed. I knew that during the
12 panel they changed the finding. During the panel
13 hearing they changed it from one finding to another,
14 and I don't know if the initial recommendation was
15 160 hours or it was changed by an administrator
16 higher. I think it was the initial recommendation,
17 but I'm not positive.

18 Q And then do you know if that initial recommendation
19 was changed by a later on process?

20 A The finding had been changed several times throughout
21 the process, and I think -- my understanding of the
22 finding is that the City sustained it for on duty
23 excessive force, when I was off duty through the
24 whole incident, and they imposed time. And now at
25 the time of this lawsuit they say, no, you were off

SHEET 17 PAGE 62

Sealed as Confidential Pursuant to Protective Order

77

1 duty and you have to pay your own attorney's fees and
2 you're subject to your own liability.

3 So the City has successfully twisted it to
4 manipulate it to discipline me as on duty and then
5 leave me on my own on the lawsuit as off duty, and my
6 theory is it's because of my union work. So I don't
7 know. The finding had been changed several times.

8 Q And can you describe to me how the finding was
9 changed and what it was changed from and to?

10 A You'd have to go through the entire file and talk
11 with our attorney that's been handling this, but at
12 one point it was excessive force, and then at another
13 point it was inappropriate conduct, and at another
14 point discretion. And there's been meetings
15 throughout the arbitration process prior to the
16 actual arbitration, negotiated settlements to change
17 it, and then the City Attorney had backed away from
18 that. So it's gotten very complex with regard to how
19 they've changed the findings and into what category
20 they've placed it in.

21 Q Now, after the next step in the proceeding, an
22 arbitration, does the result of that arbitration have
23 finality or is there anything that happens after
24 that?

25 A Arbitrators' decisions are final.

PAGE 64

Sealed as Confidential Pursuant to Protective Order

79

1 these cases.

2 Q And it looks to me like there's 18 what look like
3 case numbers over in that left-hand column.

4 MS. PETERSON: We'll stipulate that the
5 the document speaks for itself, there are 18 case
6 numbers.

7 MR. DELAPLAIN: Would you dispute that
8 there has been 18 complaints against you that have
9 been filed with the Minneapolis Civilian Police
10 Review Authority?

11 MS. PETERSON: Objection, asked and
12 answered. He has already answered that question.
13 Can we take a break, please?

14 MR. DELAPLAIN: I'd like him to answer
15 the question.

16 MS. PETERSON: Oh, sure.

17 MR. DELAPLAIN: I don't think he has
18 answered that question.

19 THE WITNESS: I don't know their coding.
20 So I don't know if these are a witness or I was the
21 accused officer.

22 BY MR. DELAPLAIN:

23 Q I understood that answer. My question was whether
24 you dispute that there has been 18 complaints filed
25 against you with the Minneapolis Civilian Police

PAGE 63

Sealed as Confidential Pursuant to Protective Order

78

1 Q Have you ever in the past gone yourself all the way
2 through an arbitration --

3 A Oh, yes.

4 Q -- on a complaint to the Civilian Review Authority?

5 A Oh, no.

6 Q When you said, "Oh, yes," about going through the
7 arbitration, what were you referring to?

8 A Oh, we've arbitrated over when a Federation board
9 member is entitled to do Federation days, when the
10 City -- how much notice they have to give the City,
11 how long they can go work inside the union office
12 for, etc., we've got a finding on that.

13 Q Okay, so just union issues.

14 A Sure.

15 Q Having nothing to do with this case.

16 A No.

17 Q Now, since we've been discussing this, does that
18 refresh your recollection at all as to whether each
19 of these case numbers indicated here do represent
20 complaints that were filed against you with the
21 Minneapolis Civilian Review Authority?

22 A Their coding, I don't know if I was the complaint
23 against an officer or if I was an officer that may
24 have been a witness to an officer involved. I don't
25 know how the Civilian Review Authority categorizes

PAGE 65

Sealed as Confidential Pursuant to Protective Order

80

1 Review Authority.

2 MS. PETERSON: Objection, asked and
3 answered.

4 THE WITNESS: I don't know, so I really
5 can't dispute it. I'd have to look at what the cases
6 were specifically in order to go there. So I don't
7 know what their codings are. The case numbers are
8 irrelevant. I don't know how they categorize it. I
9 wouldn't have any evidence to say otherwise, if that
10 helps.

11 MR. DELAPLAIN: So do you want to take a
12 break now?

13 MS. PETERSON: Yes, please.

14 (Recess)

15 BY MR. DELAPLAIN:

16 Q Lt. Kroll, when we took our break I was asking you
17 about what's been marked as Deposition Exhibit No. 4,
18 some questions about what appears to be a printout
19 from the Minneapolis Civilian Police Review Authority
20 referencing your badge number and name and certain
21 case numbers. And I understand from your testimony
22 that you don't know whether these are complaints that
23 were made against you or not.

24 A That's correct.

25 Q Now, where would the records be that showed whether

SHEET 18 PAGE 66

Sealed as Confidential Pursuant to Protective Order

81

1 these were complaints that were made against you, if
2 you know?

3 **A I would just assume still under the Police Review
4 Authority.**

5 **Q** Is there anything that's placed in your personnel
6 file when there's a complaint made against you with
7 the Civilian Review Authority?

8 **A I don't know.**

9 **MR. DELAPLAIN:** Counsel, now this is a
10 document that was provided to us in response to a
11 discovery request, and we asked for -- I don't have
12 the discovery request in front of me, but my
13 recollection is records of all prior complaints that
14 had been filed against the defendants. And as I
15 understand Lt. Kroll's testimony and your objections,
16 you're now indicating that --

17 **MS. PETERSON:** I believe we've fully
18 complied with your discovery request. I believe you
19 have a complete copy of his personnel file, and that
20 was provided to you. I believe you have a complete
21 copy of everything we have, and we have provided you
22 everything you asked for.

23 **MR. DELAPLAIN:** Regarding any complaints
24 that have been filed with the Civilian Review
25 Authority?

PAGE 68

Sealed as Confidential Pursuant to Protective Order

83

1 Authority?

2 **MS. PETERSON:** This is the only document
3 that I believe I have from the Police Review
4 Authority. I believe we have given you copies of
5 every document you have asked for. You have had
6 copies of their personnel files. And I don't believe
7 that you had any objections to any of the discovery
8 that we provided.

9 **MR. DELAPLAIN:** Well, in regard to this
10 particular item, my request was that you provide me
11 copies of the complaints that were made against him
12 with the Minneapolis Civilian Police Review Authority
13 and you gave me this document. I wouldn't have
14 objected to it, with the understanding that you were
15 actually providing me the document that was
16 responsive to my request.

17 **MS. PETERSON:** I do not -- all I can do
18 for you is ask the Civilian Police Review Authority
19 for copies of what they can give me, that's all I can
20 do, and then I can provide those to you, and I have
21 done that.

22 **BY MR. DELAPLAIN:**

23 **Q** Now, as a separate matter, Lt. Kroll, I'm going to
24 ask you, and I'm not going to mark it as an exhibit
25 at this time, but could I just ask you to look at

PAGE 67

Sealed as Confidential Pursuant to Protective Order

82

1 **MS. PETERSON:** If we have a copy of any
2 of that, you have it. And I believe the City has
3 also complied with all of your requests.

4 **MR. DELAPLAIN:** Counsel, would you be
5 willing to -- we have discovery closing I think on
6 the 15th of this month. In regard to this particular
7 document, I have a question, the same question I was
8 asking Lt. Kroll, whether this represents an
9 itemization of the complaints that have been made
10 against him with the Civilian Police Review
11 Authority. Would you agree to respond to a request
12 for admission if I sent it to you at this time
13 regarding this specific document?

14 **MS. PETERSON:** No. I've responded to all
15 of your discovery on behalf of defendants Kroll and
16 Krueger, and we have answered everything to the best
17 of our knowledge that we have. With regards to his
18 answers on this, I have no understanding of how the
19 Civilian Review Authority works or whether there are
20 other -- anything other than what I have that says at
21 the top of this document Minneapolis Civilian Police
22 Review Authority. This is all that we have. That's
23 all that we have from it.

24 **MR. DELAPLAIN:** This is the only document
25 that you have from the Civilian Police Review

PAGE 69

Sealed as Confidential Pursuant to Protective Order

84

1 that document and tell me whether you recognize it.

2 **A No, I don't recognize it.**

3 **Q** Do you recognize the form of the document?

4 **A It's some type of communications printout.**

5 **Q** Isn't that something that you work with in your --

6 **A No.**

7 **Q** -- position with the department?

8 **A You know, it looks like -- well, it says MDC. Maybe
9 it's MDC printouts of the incident that we're talking
10 about.**

11 **MR. DELAPLAIN:** I'll take it back. I
12 don't have any further questions.

13 **MS. PETERSON:** We'll read and sign. Oh,
14 I'm sorry, you may have some.

15 **MS. FUNDINGSLAND:** I just have one
16 question, Lieutenant, and that is -- and I know you
17 probably absolutely answered this question, but I'm
18 going to try it anyway.

19 **EXAMINATION**

20 **BY MS. FUNDINGSLAND:**

21 **Q** Do you have any idea from the time that you and
22 Sgt. Krueger got out of Sgt. Krueger's vehicle to the
23 time that the uniformed squads first arrived how much
24 time would have elapsed?

25 **A No, I don't know. I'm sure dispatch records would**

SHEET 19 PAGE 70

Sealed as Confidential Pursuant to Protective Order

85

1 have when the call was made and the arrival of the
2 squads.

3 Q We have that, but I'm trying to fill in prior to when
4 your call was made.

5 A From when we got out to when the call was made?

6 Q Okay, can you answer that?

7 A Within a minute or two.

8 Q Okay. What do you think it's closer to?

9 A It's too tough to answer.

10 MS. FUNDINGSLAND: All right. That's all
11 I have.

12 MS. PETERSON: Do you have anything else?

13 MR. DELAPLAIN: Nothing.

14 MS. PETERSON: We'll read and sign.

15 (The mater was adjourned at 11:21 a.m.
16 on November 6, 2009)
17
18
19
20
21
22
23
24
25

PAGE 72

87

1 STATE OF MINNESOTA }
2 COUNTY OF HENNEPIN } ss:

3 BE IT KNOWN THAT I, Linda J. Trondson, the
4 undersigned, a duly commissioned and qualified Notary
5 Public within and for the County and State aforesaid, do
6 hereby certify that before the giving of his/her
7 deposition, the said witness was by me first duly sworn
8 upon his/her oath to depose the whole truth and nothing
9 but the truth; that the foregoing is a true and correct
10 transcription of the stenotype notes taken by me at said
11 deposition; that I am not an employee, attorney, or
12 relative of any of the parties to the cause; that I am not
13 an employee, attorney or relative of any counsel to the
14 cause; that I have no interest whatever in the result of
15 the action nor am I financially interested in the action;
16 that I do not have a contract with any of the parties,
17 counsel for any of the parties or any person with an
18 interest in the action that affects or has a substantial
19 tendency to affect my impartiality.

20 WITNESS MY HAND AND SEAL this 16th day
21 of November, 2009.

22 _____
23 Linda J. Trondson
24 Notary Public,
Hennepin County, Minnesota
My commission expires January 31, 2010
25

PAGE 71

86

1 SIGNATURE OF WITNESS:

2 BE IT KNOWN THAT I, the undersigned deponent,
3 have read the within transcript of my deposition testimony
4 and believe the same to be true and correct, except as
follows:

5 Robert J. Kroll _____ Dated _____

6 Page: Line: Correction and Reason Therefor:
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____

24 LT
25 Please return to: Ask, Trondson & Smith Court Reporters
701 Fourth Avenue South - Suite 500
Minneapolis, Minnesota 55415